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Supreme Court

OF THE

United States.

October Term, 1904.

No. 52.

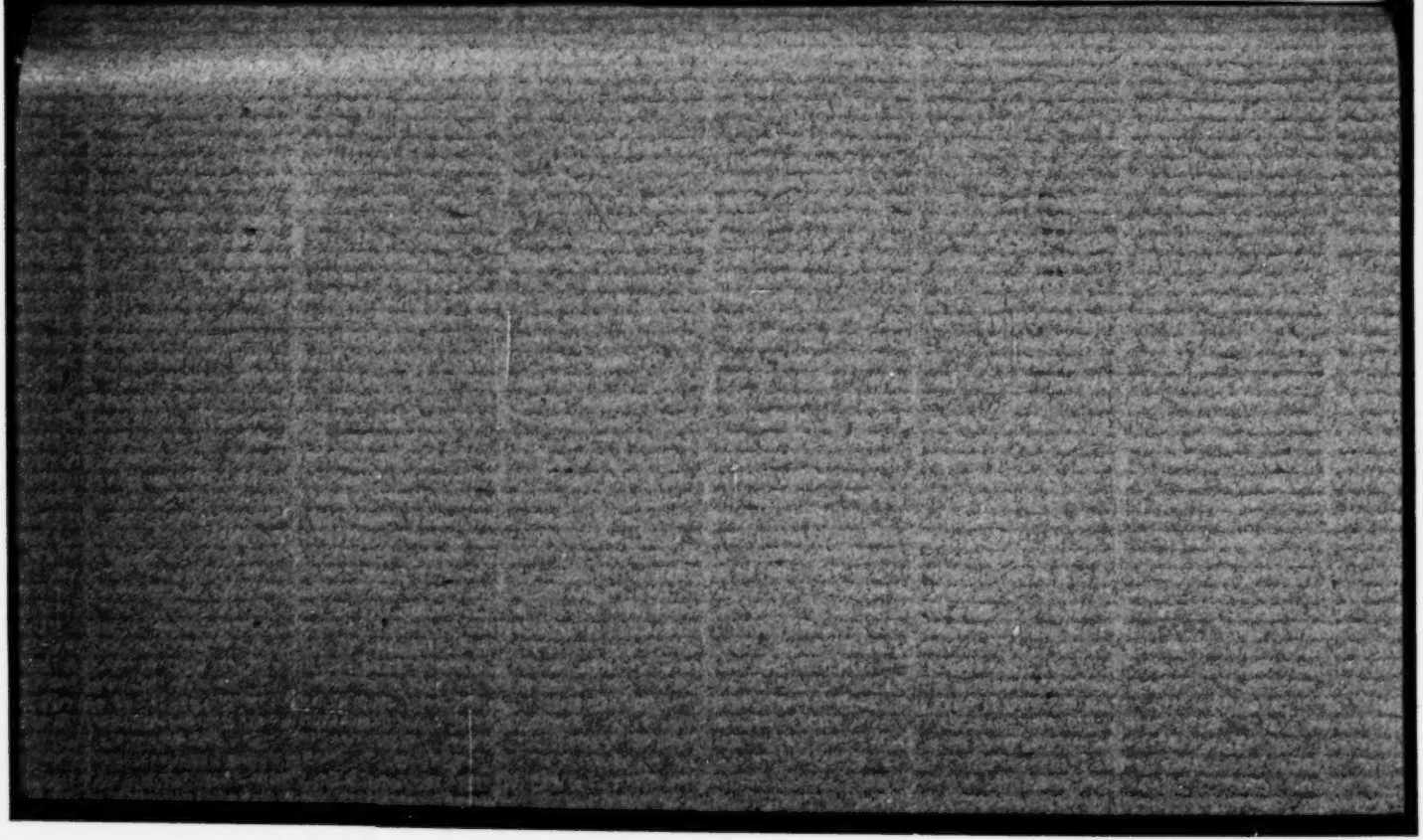
SALLIE FIELD SCOTT et al.,
Appellants,

vs

LIZZIE W. CAREW et al.,
Appellees.

BRIEF FOR APPELLEES.

1904.
Press of The H. & W. B. Drew Company,
Jacksonville, Fla.



STATUTE OF LIMITATIONS.

Upon the facts stated in the bill, the suit is barred by the Statute of Limitations; and the laches of appellants constitute a complete defense.

Sub. IV of Section 1294 of the Revised Statutes of Florida reads as follows: "Within four (4) years, an action for any article charged in a store account, and any action for relief not specifically provided for in this chapter." Sub. V of said section reads in part as follows: "Within three (3) years an action for relief on the ground of fraud, the cause of action in such case not to be deemed to have accrued until the discovery by the aggrieved party of the fact constituting the fraud."

Our contention is that both the four year and three year clauses of the statute of limitations, above quoted, are a complete bar to this action. The bill shows on its face that patent was issued to defendant in July, 1896; the bill was not filed until December, 1900, or about four and one-half years after the patent issued.

A statute of limitations, made expressly applicable to a suit in equity or barring a suit in equity, is of comparatively modern origin both in England and America. At a more distant period, there was no statute of limitations barring a suit in equity, but Courts of Equity, acting in analogy to the statute barring an action at law, invented and applied the doctrine of laches and stale claims.

Decided cases, arising under these modern statutes of limitations, are abundant to establish that both the three year and four years clauses of our statutes are an absolute bar to the suit. The said four year clause was carried into the Revised Statutes from Section XII of an Act of 1872 by the Florida Legislature, which section provides that, "An action for relief, not hereinbefore provided for, must be commenced within four years after the cause of action accrued." The Supreme Court of

Florida held that this section applied to an equity case and was a complete bar to any suit in equity, not brought within four years.

Branch vs. Cole, 18th Fla., p. 368. Speaking on the same subject in Brown vs. Brown, 17th Fla. 623, at the bottom of the page, the Court said that, "If the case were not within the three year clause, it would be within the four year clause of the statute," and, in 24th Fla., p. 1, and 28th Fla. 55, the Court held that "the statute of limitations applies to equity cases as well as to suits at law." And the Supreme Court, in the case of the United States vs. Daniel, 12th Peters, p. 56, ruled that, "In case a statute of limitations was applicable to an equity case, the Court acted in obedience to the statute and not in analogy to it;" whereas, if there is no remedy at law and there is no statute of limitations that bars a suit in equity, then the Court acts in analogy to it. Courts of Equity apply the bar in a case before it, if it would be the duty of the Court at Law to apply such a bar in the event there had been a remedy at law and a statute of limitations applicable thereto. This rule has no application to the case in hand, because there is a statute of limitations applicable to the case and bars the remedy in equity and there was no remedy at law. The case of Cleveland Insurance Company vs. Reid, 24th How. 284-287, is one of the earliest cases on the subject. There, the Statute of Wisconsin read substantially like the above four year clause in Florida, and the Court ruled that the Statute of the State of Wisconsin was obligatory upon the Federal Court. Other cases will be cited later on.

THE THREE YEAR CLAUSE OF LIMITATIONS.

This clause is applicable on the following grounds: The plaintiffs claim defendants have illegally obtained title to land that in equity should be conveyed to them and the defendants refuse to convey. This is a statement of a legal fraud within the meaning of the statute of limitations. They knew of the alleged fraud the moment

it was committed; they were parties to the litigation in the Interior Department, which the Court judicially knows is conducted on formal pleadings, and they knew that the decision of that Department went against them; that a patent was ordered in '94 and actually issued in July, '96. We think there can be no question in reason, and certainly none on the authorities, that if A. obtains a patent to land which equitably belongs to B., and takes possession of and appropriates it and its rent and profits to his own use, he has committed an actual fraud. If A. accomplishes such a result, not knowing that the land belongs to B., he has committed a legal fraud pure and simple. 2d Vol. of Wood on Limitations, Sec. 274: "Where the action which constitutes the fraud as alleged in the bill were open and public acts, the statute commences to run from the time the defendant acquired the title. Norris vs. Haggin, 136 U. S. 386-392. In that case, defendant acquired title under foreclosure of mortgage. Ib., p. 391. In that case, plaintiff at one time owned the legal title, and his remedy at law by ejectment would have been complete if he had seasonably resorted to it. In the case of St. Paul S. & T. F. R. R. Co. vs. Sage, the same doctrine was maintained. That case is on all fours with the case at bar. The land involved had been granted by the General Government to the State of Minnesota. Two rival railroad companies claimed title to it. The title was conveyed to one company and the other brought a bill in equity to compel the defendant to convey it. The clause in the Minnesota Statute reads as follows: "6th—An action for relief on the ground of fraud. Cause of action in such case is not to be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud." Which is the exact language of the three year clause of the Florida Statute with the exception of the period of time. The Circuit Court of Appeals held that the obtaining of the legal title to the land which equitably belongs to the defendants was a fraud within the meaning of the statute of limitations, and the suit, not having been brought within six years,

was barred by the statute. See Opn. of the Court, 1st C. C. A., p. 263. This Court would be bound to follow that decision unless some fault can be discovered in reasoning, which we think impossible. Of course, there can be no question that the proceedings in the Interior Department were public and notorious, and the plaintiffs being parties to such proceedings, knew of the alleged fraud upon their rights when the decision was made against them in '94 and also in the patent issued July, '96.

The case of Teall vs. Schroder, 158th U. S. 172, was one like this at bar to compel the defendants to convey to the plaintiff the legal title. Suit was brought in California. Justice Fields, speaking for the Court on page 178, quotes the statutes of limitations as follows: "An action for relief not hereinbefore provided for, must be commenced within four years after the cause of action shall have accrued," and adds, "This section applies specifically to action for equitable relief." "Other sections of the act provide for the limitations of actions at law."

"Sub. IV, Sec. 338 of the Court of Civil Procedure is as follows:" "An action for relief on the ground of fraud or mistake must be brought within four years after the cause of action accrues. The cause of action in such case not to be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud or mistake." In that, as in the case at bar, the facts showing the statute had run appeared on the face of the bill and was demurred to on that ground. The bill was dismissed because barred by the statute and on appeal of decree of the Court below was affirmed. See Opns., pp. 178, 179, 180.

Case of Baker vs. Cummings, 169 U. S. 189, is fatal to the bill on demurrer.

THE DOCTRINE OF LACHES.

A delay of over four years, during which the property involved has, in part, been sold, presumably to purchasers without notice of any plaintiff's claim, is fatal to a suit

to set aside a judicial sale. 156th U. S. 527-536. Indeed, the decision of the Interior Department was notice they had no claim. If fatal to set aside a judicial sale, it is equally fatal to set aside a sale by the United States, and in 169th U. S. 189, the Court held that the bill was not only barred by the statute of limitations of three years but by laches. Ib. 206. On the doctrine of laches, we also cite 155th U. S., p. 550; 158th U. S. 216-416; 160th U. S. 186; 156th U. S. 618.

In the case at bar, the proceedings in the land office were public, notorious acts, and the opinions and records of that office establishes that plaintiffs were parties to all the proceedings resulting in a patent to the defendants. It was six years after the decision of that office was finally rendered against them, before they brought this suit, and nearly four years and a half after patent issued.

Plaintiffs were bound to know that, when the patent issued; the title, by relation, dated from the initiatory filings in the land office, which were in 1882. They were also bound to know the law, that, as soon as the pre-emption claimants' rights or homestead claimants' rights were sustained, and the purchase money paid, the property was the property of such claimants, subject to taxation, and subject to contracts of sale, of improvements and incumbrances. They also knew that the lands in controversy were substantially a part of the City of Tampa, subject to rapid rise in value, and to frequent alienations, by deeds and other contracts, and that they would not remain in a state of nature.

Independent of the statute of limitations, if there ever was a cause to which the doctrine of laches, or state claim, is applicable, this is certainly one. Knox vs. Spratt, 23 Fla. 65-67.

EXCUSES FOR DELAY.

The bill sets up, p. 21, that one Beilby and others made an effort to get the Government to set aside the patent, and we suppose this averment was intended as an

excuse for delay. Plainly, it was not only no excuse, but reprehensible conduct on the plaintiffs' part. They knew perfectly well what the Supreme Court has repeatedly decided, that the Government never takes action to vacate a patent to land, unless in a case where, if the patent is vacated, the land again becomes a part of the public domain. They knew that the Government never takes action to vacate a patent in the interest of and for the benefit of a private claimant. Plaintiffs' willingness, then, that the title should be taken away from the patentees by action of the Government, without any benefit resulting to them, does not commend them to a Court of Equity. It is evidence of the harboring of a spirit of malice against the patentees for defeating plaintiffs in the Land Department.

An excuse for delay in bringing a suit which a Court of Equity recognizes consists of facts, showing obstacles in the way of an early suit that could not, with reasonable diligence, have been overcome at an earlier date. 12th Vol. Pl. & Pr., 834-836.

Plaintiffs also suggest in their bill, as an excuse for a delay of their suit, the fact that the plaintiffs resided in the three States of California, New York and Virginia, and to obtain concert of action by plaintiffs required time. But the answer to this suggestion is that the record shows the plaintiffs had already had concert of action before Land Department in prosecuting this claim. Therefore, the presumption is that each knew the address of the others and in this day of railroads, telephones and telegraphs, one month would have been ample time to determine the question of concert of action. Besides, the absence of concert of action was not any legal impediment to a suit. Either one or more could have sued for their share of the property, without joining the other claimants. Therefore, what the bill states as excuses for delay would be dignified by calling them pretexts.

The suit is purely an experimental one and not the less so because the plaintiffs have been able to employ reputable counsel to represent them. Its foundation is a

mist of absurdities and uncertainties.

The plaintiffs, when the Land Department decided to award a patent to the patentees, to-wit: in 1894, could have maintained a bill to enjoin such patentees from selling or incumbering the lands, and thus the patentees and third parties would have been notified of plaintiffs' alleged rights and abstained from investing in the lands, *or improving the same.* 1st C. C. A., 269-270.

In that case, counsel for complainants conceded that the innocent grantees from the patentees stand in a better position than the patentees themselves. Ib., p. 260.

CONTENTION OF PLAINTIFFS.

The contention of plaintiffs, that Section 1288 of the Revised Statutes of Florida applies to this case is entitled to no weight. That section provides for cases where the action of defense is founded on legal title to real property and applies to an action of ejectment; and in such case the statute of limitations is seven years. As abundantly shown by authorities cited, this suit in equity is not an action founded upon title to real property, but to obtain a legal title on equitable grounds.

Another point: It may be contended that some of the plaintiffs are under disabilities, being minors or married women. The bill does not show that, at the time the right of action accrued, any of the plaintiffs were under disabilities, and the saving clause in the statute of limitations applies only to the person to whom the title first accrued and, when the statute once begins to run, it continues to run. Wade vs. Doyle, 17th Fla. 522.

This is a familiar rule. But Sec. 1294, Sub. IV-V, already discussed, contains no exception on account of any disability, and it is a familiar rule that, where the statute of limitations makes no exception in favor of any person, either minor or married woman, the Court of Equity cannot engraft any exception upon the statute. We repeat, the bill does not show that any of the minors were in existence, or that any of the married women were

married women, either at the time the patent was ordered in 1894 or issued in 1896. But a complete answer to any contention that any of the plaintiffs were under disabilities is that the only section of the Revised Statutes of Florida providing for any disability in Section 1292, and that applies specifically to persons entitled to commence an action for the recovery of real property or to make an entry or defense founded on the title to real property. In such cases, there is a disability in favor of minors, insane and imprisoned persons, and none in favor of married women. This section, like Section 1288, applies only to actions at law to recover real property, based on legal title. Both sections are expressed in language so clear that there is no room for doubt on that subject. Under Sections 1287 and 1288, if the action is founded on title to real property, it is not barred until the lapse of seven years; and Section 1292 provides that, if at the time the title to real property accrues the party to whom it accrues is within the age of twenty-one years, insane or in prison, then the time such disability continues shall not be deemed any portion of the time in this chapter limited for the commencement of such action or the making of such entry or defense, but such action may be commenced within the period of seven years after such disability shall cease, etc.

The Legislature having provided by Sections 1287 to 1293, inclusive, a system of statutory limitations in case of actions founded on legal title, it then proceeds in Art. III, Sec. 1294, to declare provisions applicable to actions other than real actions. The first clause of Section 1294 reads as follows:

Limitations: "Actions other than those for the recovery of real property can only be commenced as follows," and declares the period of the statute in seven various actions other than to recover real property, and among the seven is the four year and the three year clause. The provisions of the statute are so clear and plain that we deem the citation of authorities unnecessary. The contention of the plaintiffs that the seven years limitation

in Section 1288 applies, that is, a Court of Equity can apply it, by way of analogy, if the seven years had run before the suit commenced, would render the four year clause and three year clause applicable to action in equity for relief, entirely nugatory and inoperative. In short, it is very plain that this bill in equity treating the defendants as trustees to compel them to convey the legal title, cannot be tortured into an action for the recovery of real property, based upon the seisin or possession of the plaintiffs, their ancestors, predecessors or grantors. This is clearly shown in the case of Branch vs. Cole, 18th Fla. 368, where the Court declares in first syllabus as follows:

"A suit in equity claiming dower and mesne profits is not an action to recover real property, based upon the seisin or possession of the plaintiff," etc.

The Court in its opinion on page 375, considered Section 2d of the Act of 1872, which in its language is in legal effect the same as sections of Revised Statutes number 1287 and 1288, and, if a bill in equity to set aside dower and recover profits which is to determine the legal title to property is not an action to recover real property, certainly this bill to compel a conveyance of the title to real property and the recovery of profits is not an action for the recovery of real property.

JOINDER OF PARTIES, SOME BARRED AND SOME NOT.

Plaintiffs suggest in their brief that some of the plaintiffs are the next friend of infants.

By a statute in Florida, an infant can sue by a next friend. We have not examined the point, but we suggest it is doubtful that the Florida statute applies. If not, then infants in an equity cause in the Federal Court can only sue by a lawfully appointed guardian.

It is also suggested that the next friends of infants can maintain the suit, even though all of the other plaintiffs are barred by laches or the statute of limita-

tions.

But the answer to this is that the doctrine of laches applies to guardians and next friends as well as the other plaintiffs.

The further answer is, all the plaintiffs sue jointly, and pray for one decree for a conveyance of the property to all jointly as tenants in common.

In such case, it has been a long established rule, that where the plaintiff sues jointly and one is barred all are barred.

Davis vs. Coblens, 174 U. S. 719, and cases cited.

ON THE MERITS.

FIRST POINT.

The proposition on which relief is based, is that the Secretary committed an error of law on his finding of facts, to plaintiffs' prejudice.

The substantial findings of fact, admitted in the bill are:

(a) That Hackley made a settlement in November or December, 1823, and remained in possession to February 1st, 1824.

(b) That Col. Brooke took possession, and appropriated the land to Government uses February 1st, 1824.

(c) That neither Hackley nor his heirs have ever been in possession since the land was so appropriated to Government uses.

(d) That the Government continued to occupy and held possession for military purposes until 1882—a period of fifty-eight years.

(e) That Hackley's heirs made no attempt to acquire the right of possession, under the Act of 1884, until Carew had been in lawful possession as homestead entry man for nearly five years, and made improvements thereon according to law.

(f) That there were no papers on file in the Gainesville Land Office in 1882, when Carew entered, giving any notice to him that the Government officers in the Public

Land Department had ever recognized, that Hackley had ever initiated a claim to the land, pursuant to and in compliance with any Act of Congress.

The above, though not all in so many words, were the facts found by the Secretary.

POINTS OF LAW.

1st. The Secretary found as a matter of law, or mixed law and fact, that Hackley's possession was not only not in accordance with any Act of Congress, but his entry was prohibited by law, so far as acquiring any inchoate or equitable right, and that in fact, he was a trespasser.

Plaintiffs do not claim there was any error of law in that finding, and there plainly was not, under the Act of 1807.

2d. That the Government had the lawful right; through its military officer, to take possession and appropriate the land to Government uses during the period of time from February, 1824, to 1882.

Plaintiffs do not contend there was any error of law in that finding.

3d. This being so, it necessarily follows that, when the land was abandoned for Government purposes, and was duly restored to the public domain, the legal title to the land and possession was in the United States. This plaintiffs do not deny this proposition.

4th. The legal title and possession thus being in the United States, in 1882, and having thus for the first time been surveyed, and the land being a part of the public domain, the Government, under the then existing laws, or under any new Act, like that of 1883, had the legal right to sell the land to the highest bidder or to any person having the capacity to comply and who should comply with the pre-emption laws or homestead laws. That Carew did comply with such homestead laws and was entitled to the patent.

It is in this fourth finding of law that plaintiffs

insist an error was committed to their prejudice. And their entire ground for relief is based on the above alleged error in law by the Secretary.

ARGUMENT.

1st. It must be conceded, and plaintiffs do concede, the universal rule to be, that the title to public land, being in the United States, no person can acquire an inchoate right to possession and subsequently the legal title save in a manner prescribed by Act of Congress.

2d. Plaintiffs necessarily concede, as a general rule, that the Government under an Act of Congress, can dispose and sell any of its lands, unless a claimant has acquired a vested right to have a title, under some prior Act of Congress, with which such claimant has complied.

3d. And we are thus brought to the pivotal point: Do plaintiffs, by their bill, clearly sustain their claim that the Secretary erred in deciding that plaintiffs, prior to 1882, have not acquired a vested right that barred the sale to Carew?

Plaintiffs' case rests entirely and exclusively upon this alleged error, which they must sustain or fail.

Their argument is based upon a line of fallacious reasoning.

They admit that, under the Act of 1807, their ancestor acquired no right, and that the marshal of a "military force" could and did lawfully remove him.

But plaintiffs base their case on the claim that the words in the Act of 1826, as follows, to-wit: "That any person * * * who * * * did on or before the first day of January, 1825, actually inhabit and cultivate a tract of land situated in the Territory of Florida, which tract is not rightfully (in 1826) claimed by any other person," etc., includes in its description their ancester Hackley and the land in question.

It is most reasonable that Congress by such Act did not intend to uproot public policy, and annihilate the power arising from public necessity, in peace or war, and

especially in time of war, to appropriate any of its land to public, civil or military uses, as against any person even in possession, who had not acquired the legal title or a vested right to have a legal title, conveyed by patent.

It is conceded that when this Act of 1826 was passed, Hackley had never acquired any right of possession, or any equitable right whatever. Whatever right he ever had, was conferred by that Act itself.

Now, we submit that it is absurdly unreasonable to conclude that by the Act of 1826, Congress intended to include land, which was then lawfully in possession of military forces, and had been lawfully appropriated to military uses, under pressure of military necessity.

Such a construction of the Act would prove too much.

It would establish that Congress intended to create in behalf of a prior occupant, contrary to law, a right to base an inchoate right to acquire a right to purchase land already appropriated to public uses; which right, to assert such inchoate right, could only be resorted to after the Government ceased to use the land, and had vacated the same.

This inchoate right to spring at once into existence, the moment the Government vacated, which might be 1,000 years, 100 years, and in this instance was 58 years, or might never be.

Military occupations of the frontiers, has repeatedly been the nucleus and cause of the building large towns and cities near by, under the protection of military forces. The history of the country furnishes numerous instances of this.

Military forces and civil officers make improvements on the land occupied, by building permanent and irremovable structures, like storehouses, officers' quarters, barracks, lighthouses, etc., and also cultivate the land itself. When in future such land is abandoned for public uses it has, by reason thereof and settlement of the adjacent lands, and the creation of towns and cities thereon, become very valuable. There being no vested right in another, the Government has the right as a part of its revenues, to

avail itself of such improved value, created by itself, and sell the same to the highest bidder. Such a right has often been exercised. This right in equity and law, is superior to any duty the Government owed to the heirs of one situated as Hackley was. In this instance, it is concluded, the Government owed no duty to Hackley, who was a trespasser, and whose only occupation of the land was that of a trespasser.

The Secretary decided that the Government had the right to sell this land thus improved, to the highest bidder.

That it did not do so, but sold it to a homesteader, at a smaller price, created no right in Hackley's heirs, nor could they complain of any more than of a sale at public outcry.

Thus we think it is demonstrated, that the land in question, being in the lawful possession of military forces, to continue indefinitely, was not embraced in the description of land intended by the Act of 1826. The Government having the legal right to appropriate the land to its uses, it is wholly immaterial whether or not the United States is included in the words: "which tract is not rightfully claimed by any other person." Considering the subject matter to be land, and the relation of the Government to it, it would not be a constrained construction to hold that the clause did embrace the military forces of the United States. Though soldiers, they were still persons

But it is a fundamental rule of construction that though the "letter killeth, the spirit liveth," and that which is implied is as much a part of the statute as if it had been written into it.

The Act should be construed and applied exactly as if, after the above quoted clause, the clause following had been added, to-wit: "or which has not been appropriated by the Government for public purposes."

This latter clause is as much a part of the statute as if written into the Act itself.

And this, for the reason that Congress and the Judicial Department of the Government, has from its

foundation held and frequently declared, that the Executive Department, by necessary implication, always has the power to appropriate to Government uses any lands in which no vested right has been acquired.

And when thus appropriated the land ceases to be a part of the public domain, in which no citizen, under any Act of Congress, can acquire even an inchoate right.

Plaintiffs concede this as a general rule. But by asseveration, not by reason, in this instance, assert that, by the Act of 1826, though the land was before then appropriated to public uses. Congress fastened one end of a chain around this land, and the other end around Hackley, and all his heirs were born with this chain around them, and the moment the Government ceased to use the land in 1882, such heirs, by a pull on the chain, could draw this land out of the public domain, and when they made that pull, they acquired a vested right which rendered the Government powerless to sell it to anybody else. And this upon an attenuated and refined use of words.

Undoubtedly, we think, the land embraced in the first section of the Act of 1826, was such land, either in the possession of the settler referred to in the Act, or was vacant, and unclaimed by any other; so that such settler could, or his grantee could, when a vested right was obtained, take possession and enjoy its use. Otherwise no benefits could accrue to the former settler, who was not in possession when the Act was passed.

If the land was occupied by the military forces, neither the settler nor his grantee could derive any benefit whatever by a construction to the contrary, except the indefinite, vague, intangible and invisible right at some future time that might never arrive, because, the Government might have in this case as in other cases, occupied the land for forts and military purposes forever.

We submit, therefore, that the Secretary did not err, as a matter of law, in holding that when the Executive Department in 1882, relinquished this land for military purposes, Hackley's heirs had no vested right, or any

better right to move thereon, and acquire title than had Carew.

The above is apart from all considerations that neither Hackley nor his legal representatives complied with the law of 1826 and that of 1813, made a part thereof.

In cases of this character, plaintiffs, before they can take the title from the patentee, they must make out a case free from any reasonable doubt.

The legal title will not be taken away while a reasonable doubt remains as to plaintiffs' right to it. This is fundamental.

H. BISBEE,
for Appellees.